

**ENTERED**

January 13, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KENNETH W. BENJAMIN,

§

Plaintiff.

§

VS.

§ CIVIL ACTION NO. 4:20-CV-00214

THE BANK OF NEW YORK  
MELLON, ET AL.,

§

Defendants.

§

**ORDER ADOPTING MAGISTRATE JUDGE'S  
MEMORANDUM AND RECOMMENDATION**

On July 31, 2020, Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint Under Fed. R. Civ. P. 12(b)(6) (Dkt. 42) was referred to United States Magistrate Judge Andrew M. Edison pursuant to 28 U.S.C. § 636(b)(1)(B). Dkt. 70. On December 28, 2020, Judge Edison filed a Memorandum and Recommendation (Dkt. 80) recommending that Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint Under Fed. R. Civ. P. 12(b)(6) (Dkt. 42) be **GRANTED** in part and **DENIED** in part.

On January 12, 2021, Plaintiff filed his Objections. In accordance with 28 U.S.C. § 636(b)(1)(C), this Court is required to "make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection [has been] made." After conducting this de novo review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*; *see also* FED. R. CIV. P. 72(b)(3).

The Court has carefully considered the Objections; the Memorandum and Recommendation; the pleadings; and the record. The Court **ACCEPTS** Judge Edison's Memorandum and Recommendation and **ADOPTS** it as the opinion of the Court. It is therefore **ORDERED** that:

- (1) Judge Edison's Memorandum and Recommendation (Dkt. 80) is **APPROVED and ADOPTED** in its entirety as the holding of the Court;
- (2) Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint Under Fed. R. Civ. P. 12(b)(6) (Dkt. 42) is **GRANTED** in part and **DENIED** in part. Specifically, Plaintiff's causes of action for quiet title based on an alleged violation of § 50(a)(6)(M)(i) of the Texas Constitution, declaratory relief, and injunctive relief remain. All other claims to relief are **DISMISSED**; and
- (3) Defendants Rachel Donnelly and Hughes Watters Askanase, LLP are dismissed from this proceeding.

It is so **ORDERED**.

SIGNED and ENTERED this 13th day of January, 2021.

  
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GEORGE C. HANKS, JR.  
UNITED STATES DISTRICT JUDGE